"INTERNATIONAL COMMERCIAL ARBITRATION. THE MEXICAN CASE."

By Carlos Rodríguez González-Valadez[1]

1. INTRODUCTION.

Jus respicit aequitatem[2]

International Commercial Arbitration is a highly advisable way of resolving disputes. Nevertheless, it has been used less often than litigation, since lawyers from certain countries do not have sufficient knowledge about this topic. Particularly, Mexico has this transcendental problem, which has to be taken into account to have good results in the world-wide commercial opening. The aforementioned knowledge must be considered from a legislative point to a practical one.

The legislative point includes mainly two parts: (i) a modern arbitral legislation, as is the case where the Model Law drafted by the UNCITRAL has been adopted, and; (ii) those international agreements that are essential for this topic.

On the other hand, the practical point is the decision about where and how arbitrations must be held, always depending on the circumstances of the particular case.

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[2] "Law has regards to equity". COTTERELL (1913), p.36.

This article tries to analyse the pertinent Mexican legislation in order to function as a guide for a Mexican Lawyer who is not used to international arbitrations and wants to be competitive in respect of other lawyers around the world.

2.1. WHY TO USE ARBITRATION IN INTERNATIONAL COMMERCIAL DISPUTES.

> *Compromissarii sunt judices*[3]

Where a commercial dispute arises between two international dealers, we have different ways of achieving a settlement of that international dispute.

Amongst them, we firstly find negotiation, which is the simplest and usually the quickest form and the most advisable from our point of view. Nevertheless, the limitation in negotiating is that the parties should be in the best position to know the strengths and weaknesses of their respective cases, and we have to realise that this is occasionally impossible. Although negotiation is mainly a way of settling disputes where the parties have direct intervention, they must be advised in some points of difficulty or controversy by lawyers, accountants, engineers or other experts, as required. Unfortunately, on some occasions, parties agree to settle their disputes by negotiating, once they have already used other ways, such as litigation, and this means that money was unnecessarily spent[4].

The second way of achieving a settlement of an international dispute is mediation. The difference between mediation and negotiation is that in the former there exists the intervention of a disinterested third person, this does not apply in the latter case. The third party is generally an expert technician on a specific issue, and it could be only one person or a group of them. This way of resolving the dispute is highly advisable, since the intervention of a third party is conducive to more objective, and ultimately more just, dispute resolutions. Nevertheless, as the decision of the mediator is only an opinion, and hence non-binding, sometimes it is not followed by the party who breached the contract in the mediator's opinion[5].

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[3] "Arbitrators are judges". *Opcit*. FN.2, p.126.
[4] For further information about negotiation, see "The Art of Negotiation", http://wymple.gs.net/~trinity/ch22.html (internet page).
[5] For further information about mediation, see "*Lex Mundi* College of Mediators", http://www.lexmundi.org/med-agreement.html (internet page).

The third and the most common way is international commercial litigation. In this case the proceeding is held according to the applicable rules, which means the law of the forum. Where parties do not expressly agree the substantive rules, it is often quite difficult to determine the applicable ones. Even though this way of resolving disputes could be very positive and useful, we have to realise that there many factors that can transform it into an unfair one[6].

Finally, we have international commercial arbitration, where a Tribunal decides a dispute arisen between two merchants. We consider that the importance of this method of resolving disputes is that it comes from the agreement of the parties, that means that the self-autonomy principle of the willing parties has its most representative expression in this agreement.

One of the purposes of this article is to show why a Mexican lawyer should choose international commercial arbitration over and above other methods to resolve a dispute in which his client is a party. To do this, an *a priori* analysis of the case is highly recommended in order to determine whether negotiation is a viable option. In case this is not possible, one must choose between the remaining alternatives; international commercial litigation and international commercial arbitration. We do not take mediation into consideration, since it is more effective in the field of public law than in commercial law.

At this time, we will outline the reasoning as to why a Mexican lawyer should choose international commercial arbitration instead of international commercial litigation. We part from the premise that the former is a better option than litigation.

The comparative advantages and disadvantages of arbitration as opposed to litigation have been well rehearsed[7]. Some of the following are of particular importance:

1. In case a dispute arises between a Mexican dealer and, for example, an English dealer, and if they choose international commercial litigation as the method to resolve the dispute, the Mexican enterprise will probably want to choose a Mexican Court to hold the proceeding, and the English company will naturally opt for an English Court. In this scenario, the place where the dispute is to be resolved will have striking repercussions upon the final outcome. The Mexican

[6] For further information about international commercial litigation, see CHESHIRE AND NORTH'S (1995).
[7] See KERR (1980), p.164.

company, given the case that the dispute is to be resolved in Mexico, which will be determined by an agreement or by laws of conflict which establish jurisdiction[8], will have language, expertise and system advantages over the English company. The opposite will occur if the case is resolved in England.

The situation above is inherently unfair, since the alien company is at an automatic disadvantage. In the case of Mexico, we have to recognise that Mexican lawyers are not used to participating in proceedings held in England, that they do not know English law and consequently, that they will have to be assisted by English lawyers, which becomes very expensive for the Mexican dealer.

In both cases, regardless of whether the dispute will be resolved in Mexico or in England, we could find political factors that might influence the judgement, being harmful for one party. Unfortunately, there is not yet an international court in which these kind of disputes can be resolved[9].

2. By using arbitration, dealers will find the benefit of deciding: (i) the members of the Tribunal; (ii) the rules under which the arbitration proceeding will be administrated; (iii) the place of the arbitration; (iv) the applicable substantial law, and; (v) the lawyers who will advise each party.

In relation to the faculty of choosing the members of the Tribunal, we could mention that this advantage has to be seen against the fact of choosing judges, which is not possible. Firstly, arbitrators may be chosen for their special skills and experience in commercial law or some other relevant discipline. This experience and preparation saves money and time to the parties, as well as offering a sensible award. In the case of Mexico, at least, arbitrators are generally more capable than judges to interpret the will expressed in the Contract, as well as to qualify and to evaluate the breach of the contract from which the dispute arose. Moreover, arbitrators have less cases than judges, which means that they are going to have more time to invest while studying each case and thus have a closer relation with the parties. Besides, in Mexico, judges are used to analysing cases under national law and hence are not used to studying foreign legislation[10], and as

[8] See articles 12, 13, 14 and 15 of the Mexican Civil Code.

[9] It has not to be confused the "International Court of Justice", which resolves international disputes between States, where they act with sovereignty, and between other subjects of international public law.

[10] Mexican legislation foresees that, in case a Mexican judge has to apply foreign legislation, the interested party has to submit and prove this law to the judge and the judge has to apply this law as if he were a judge of the country where the law comes from. See articles 1197 of the Mexican Commercial Code and 86-bis of the Mexican Federal Code of Civil Proceeding. We have the idea that it is almost impossible that a Mexican

we know in international sales the applicable law is often different from the one of the judge's nation. Arbitrators will tend to be more able in applying foreign and international law to the case.

Related to the applicable rules, including both, the substantive and the adjective law, the following can be said:

(i) In substantive law, the parties are able to choose the rules that best fit the particular case, in some cases this will be the law of one of the parties in the dispute, whilst in others, the law of a third country will be applied[11]. It is necessary to mention that there are international agreements such as the United Nations Convention on Contracts for the International Sale of Goods, that can be applied to these transactions[12].

(ii) In adjective rules, we can mention that arbitration is more flexible and adaptable and consequently quicker and more efficient than litigation. The court's rules must be capable of dealing with many different kinds of cases, and hence might be unsuitable for some commercial trials. In arbitration, however, it is possible to tailor the rules to fit the particular case.

There are proceeding rules such as the ones of the LCIA and the ICC that are highly recommended. Obviously, arbitrators and lawyers must know both the pertinent substantive and adjective rules in depth, since it is they who have been selected to act as experts on such a law.

Related to the place of the arbitration, it can be said, that it is an advantage since it shows a neutral point. To decide the place of the arbitration, parties must take into consideration the geographical situation, the physical space and availability of services, the value of the business, and, from the legal and political perspective, the following has to be considered: (i) that the arbitral legislation of the chosen place is modern enough and adaptable for the law chosen by the parties; (ii) that such a country has adopted the United Nations Convention of Recognition and Enforcement of Foreign Awards; (iii) to choose preferably a place where the assets are held, and; (iv) that the place has a good environment to celebrate hearings and all the stages of the proceeding.

judge could apply, for example an English legislation as if he were an English judge, and this is possible if an arbitrator is a person who has, at least, some experience in English law.

[11] Fur further information about choice of law clause, see *Opcit*. FN.6, pp.107-137.

[12] See SCHMITTHOFF (1990)., p.249.

Related to the lawyers who will advise each party, it can be said that this might not be considered as an advantage in arbitration. Nevertheless, in the case of Mexico, we consider it as an advantage due to lawyers who advise parties in arbitrations are, because of their experience, generally persons highly qualified in the concerned matter. Moreover, parties are not obliged to be advised by national lawyers of their countries, opposite to litigation where lawyers need special authorisation to act in hearings and they usually have to be nationals of the country where the hearings are held[13].

3. Some other benefits, amongst many, where arbitration is chosen instead of litigation are: (i) arbitration is a private process, which is an advantage to those who do not want details of their quarrels to be disclosed in open court, with the possibility of further publication elsewhere; (ii) continuity of arbitration, which means that arbitrators follow the case from beginning to end, unlike a judge who often only makes his appearance when all the pleadings and relevant documents have been exchanged and the hearings are about to begin, and; (iii) the world-wide tendency, mainly in Europe as well as in Mexico, about the non-appealable character of the arbitral award. An exception to this, it is where the award is declared null and void.

As this task tries to outline the advantages of submitting an arbitration to the LCIA, we would like to mention the opinion of Mr. Alan Redfern and Mr Martin Hunter in the case where parties decide institutional arbitration as the method to resolve a dispute, and with whom we strongly agree. They say that "rules for institutional arbitration are established by the particular institution concerned; most notably the AAA, the ICC, ICSID, the LCIA, or the SCC. These rules will generally have passed the essential test of working well in practice. They will have undergone periodic revision in consultation with experienced practitioners to take account of new development in the law and practice of international commercial arbitration. They are generally set out in a small booklet; and the parties who agree to submit any dispute to arbitration in accordance with the rules of a named institution effectively incorporate that institution's book of rules into their arbitration agreement"[14].

In addition, Mr. Redfern and Mr. Hunter consider that the following are advantages in an institutional arbitration: (i) automatic incorporation of a book rules,

[13] Nevertheless, Mr. Alan Redfern, in a conference, held that in recent cases, countries such as Singapore and Malaysia have not allowed foreign lawyers to participate in arbitrations held in their territories. see REDFERN (1989), p.6.
[14] REDFERN (1991), p.54.

and; (ii) that most arbitral institutions provide trained staff to administer the arbitration. If an arbitration is not administered in this way, the work of administering it, will have to be undertaken by the Tribunal itself, and in a particularly heavy or important case, it might even be necessary to appoint a secretary or registrar to take care of financial and administrative arrangements.

As disadvantages on institutional arbitrations, Mr. Redfern and Mr. Hunter consider that: (i) it tends to be expensive, and; (ii) they point out the inevitable delays which result from the need to process certain steps in the arbitral proceedings through the bureaucratic machinery of the arbitral institution involved.

Concerning these two apparent disadvantages, we have to mention that we do not agree with Mr. Redfern and Mr. Hunter because of the following: It is true that an institutional arbitration can become very expensive in comparison to international litigation, because this last method of resolving disputes is supposed to be free, since it is a public service from the government. However, at least in Mexico's case, taking into account the money spent in legal services during the proceeding, ulterior legal and illegal costs[15], and most importantly, the lack of certainty in obtaining anything even vaguely resembling a fair resolution, this cheaper option will often become much more expensive as a result of institutionalised deficiencies. This is particularly striking in cases involving important quantities of money, where the corruptive potential becomes accentuated.

On the other hand, although Mexican lawyers do not have much experience in institutional arbitration, it is clearly known that the bureaucratic machinery of the arbitral institution involved is far less than that of the judicial system in Mexico and in other countries. We do not deny the existence of the bureaucratic machinery in these arbitral institutions, but it depends on the institution we are talking about, and the circumstances of the case.

Before moving onto the next point, we would like to mention a comment by Lord Justice Bringam[16], who considers that "arbitration is the perfect method to resolve disputes, because it is a method which depends on the free election of the parties", this is quite relevant since it affirms the due importance to the will of the parties which is the pillar stone of international commercial law. This opinion is enriched by Mr. Alan

[15] We have to mention that we are completely against these expenses, that they are one of the most important problems in underdeveloped countries, but we are realistic and realise that they exist and they have to be considered.
[16] BRINGHAM (1989).

Redfern's subsequent comment: "while it starts with the free agreement of the parties, it finishes with an internationally enforced decision".[17]

3. THE MEXICAN LEGISLATION.

Lex semper dabit remedium[18]

3.1. The Mexican Constitution.

As a constitutional system[19], the main legal document in Mexico which provides the fundamental rights, and which establishes the government's limits is the "Political Constitution of the Mexican United States", also known as the national "*Carta Magna*". In this document, we can find several articles relating to international commercial arbitration[20].

3.2. The Mexican Commercial Code.

The second tier in this legal pyramid is the Commercial Code[21]. Since 1989, modifications to this Code have been made. Nevertheless, those modifications were insufficient. At this stage, it was deemed necessary to improve national legislation in the area of international commercial arbitration. Such a necessity was formalised by the Mexican Union Congress by reforming the Commercial Code and the Civil Proceeding Federal Code[22]. The legislative reform was deemed necessary to help in the consolidation of Mexico's ever expanding commercial ties with the international community.

The reform aimed to adopt the Model Law proposed by the UNCITRAL, which is a modern and useful group of rules which regulate the whole proceeding, starting with the arbitral agreement until the recognition and enforcement of the arbitral award.

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17 REDFORN (1976), p.11.
18 "The law will always give a remedy". *Opcit*. FN.2, p.174.
19 For further information about the Mexican legal system, see TENA RAMIREZ, (1985).
20 Articles 13, 14, 17, 25, 73, 104 and 133, amongst others.
21 This Code entered into force on the 1st of January 1890.
22 Such a reform was published on the Mexican Official Federation Journal on the 22nd of July 1993.

Here, we could question ourselves as to why it is convenient for Mexico to adopt this Model Law within its national legislative framework.

The answer to this question has two aspects. Firstly, if the parties agree to apply this Model Law when negotiating the way of resolving disputes in an international agreement, it will be easier and more reliable for them to know that the applicable legislation is acceptable world-wide, taking out fears and the necessity of studying different legislation.

Secondly, if Mexico is chosen as the place for an arbitration, the supplementary legislation to that already agreed by the parties will be the Model Law, which means that every gap in the legislation agreed will be covered by a world-wide accepted rule.

We find the legal base of international commercial arbitration in article 1051 of the Commercial Code, which foresees that "the preferred commercial proceeding is that freely agreed by the parties, which could be a conventional proceeding before a state court or an arbitral proceeding", in which case it shall be regulated by the Fifth Book, Title Fourth of the mentioned Code.

The aforementioned Title, referred to as "about the Commercial Arbitration", covers from the article 1415 to 1463 and is divided into the following nine chapters:

Chapter I, referred to as "General Dispositions", contemplates the scope of the law, which covers both national and international arbitrations when Mexico is chosen as the place of an arbitration, except for: (i) those international agreements of which Mexico is part; (ii) different procedures foreseen by other Mexican laws, and; (iii) law prohibition to use arbitration when resolving some controversies. On the other hand, this Chapter establishes and defines basic concepts such as: (i) arbitral agreement; (ii) arbitration; (iii) international arbitration; (iv) costs, and; (v) Tribunal. It also determines interpretation rules, notification rules and time limits.

Finally, this Chapter establishes the jurisdiction of the appropriate judge in case a judicial intervention is required during the arbitral proceeding[23].

Chapter II, referred to as "Arbitral Agreement", regulates the way in which this agreement must be presented. It must be done so in writing and in a document signed by

[23] The appropriate judge is the first instance federal judge or the one of common order of the place of arbitration. Where the place of arbitration is outside the Mexican territory, the appropriate judge is the first instance federal judge or the one of the common order of the place where the looser is domiciled or where the assets are.

every party, or by interchanging letters, telex, telegrams, faxes or through other modes of communication. Where the existence of an arbitral agreement is affirmed in a lawsuit by one party, and is not denied by the defendant, this will be deemed sufficient to prove the existence of such an agreement. With the existence of an arbitral agreement, the judge automatically loses judicial competence over the dispute. However, he will still be able to undertake legal interventions prior to, and during the arbitral proceedings.

Chapter III, referred to as "Composition of the Tribunal", gives the parties freedom in choosing the members of the Tribunal and the procedure for its designation. Where no agreement can be reached as to the number of members in the Tribunal, one arbitrator will be nominated. If there is no agreement as to his designation, the arbitrator will be designated by the judge, and the nationality of the arbitrator will not be an obstacle for the designation. This chapter establishes the causes and proceeding for challenging the arbitrators, in which case, a substitute will be designated.

Chapter IV, referred to as the "Tribunal's Competence", establishes the power of this Tribunal, including the power to decide on issues such as: its own competence and the existence and validity of the arbitral agreement. It establishes the autonomy of the arbitral agreement from the contract in which it is found. Finally, it regulates some causes to challenge, as well as the power of the Tribunal to order precautionary measures.

Chapter V, referred to as "substantiation of arbitral proceeding", has its fundamental basis in the principle of equality between the parties. It gives the parties complete freedom when choosing the procedure, the language and the place of arbitration.

This chapter regulates every legal step during the proceeding, starting with a lawsuit, followed by the Respondent's response. It regulates specifically, the way of submitting documents and other legal proofs, the way of holding hearings, expert witnesses, the case when a party is in default, and finally, the way of requesting judges to collaborate in the arbitral proceeding.

Chapter VI, referred to as "Pronouncement of the award and finishing of the proceeding", establishes that the award will be given according to the law chosen by the parties or according with the Tribunal's conscience, when it is an *ex aequo ex bono* arbitration. It also establishes that the award must be according to the agreement and the legal usage.

This chapter declares that all decisions of the Tribunal must be taken by a majority and that the President is able to decide in proceeding questions.

Finally, this chapter establishes the causes under which the proceeding can be concluded, where the ultimate aim remains the just resolution of the dispute. The Tribunal is entitled to correct arithmetical errors, typographical errors, photocopy or other similar errors, as well as having the right of interpreting a specific point of the award and the possibility of drafting an additional award where the main award does not resolve disputes analysed during the arbitral proceeding.

Chapter VII, referred to as "about costs", is not contemplated by the Model Law. The Commercial Code establishes that the parties can directly adopt, or with reference to an existing rule decide upon, the legal costs attributable to the arbitration. In order to effectively establish the cost of the arbitration, the judge's opinion may be sought and the following variables must be taken into account: (i) the value of the business; (ii) the complexity of the topic, and; (iii) the time invested and other relevant circumstances. The Tribunal may ask the parties for a deposit before commencing the proceeding, with the purpose to warrant the correspondent payment.

Chapter VIII, referred to as "about the nullity of the award", foresees that the judge is the only person who is able to declare the award null and void, there is no right of appeal in respect of this decision. This can happen in several situations: (i) where the incapacity of one of the parties is proved; (ii) where the arbitral agreement is void under the applicable law, or where not stipulated to that respect, under Mexican law; (iii) where a party was not, or was incorrectly served of the nomination of the Tribunal or its subsequent activities; (iv) where a party, due to a reasonable cause, was not able to exercise its rights; (v) where the arbitral award is about a dispute not contained in the arbitral agreement, or the award is beyond the agreed. In this case, only that which goes beyond the terms, will be nullified; (vi) where the composition of the Tribunal or the arbitral proceeding does not conform to the arbitral agreement, and, (vii) where the judge proves that, under Mexican legislation, the dispute is not eligible to be resolved by arbitration or is against public order[24].

Chapter IX, referred to as "recognition and enforcement of the awards", foresees that arbitral awards, wherever they are pronounced, will be recognised and, after written

[24] According to Ignacio Burgoa, the public order consits in the arrangement, sistematisation and composition of the social life with the aim to an especific finality to satisfy a colective necesity in order to procure a public well-being and to prevent a bad human conglomerate. BURGOA, (1971), p.706.

petition to the judge, will be enforced according to Mexican legislation. In this case, the judge's decision may not be subject to appeal. This chapter also establishes the requirements to be accompanied when soliciting the recognition and enforcement of the award, and those cases in which the judge is able to deny such a recognition.

3.3. The Mexican Federal Code of Civil Proceedings.

Although the arbitral proceeding is totally conventional, it has to be taken into consideration that the judges have a participation during the proceeding. This participation is kept to a minimum but it is necessary, since the Tribunal is not a representative of the sovereign state[25], whereas the judge has the legal power to enforce the decision. For this reason, it was deemed convenient to reform the Mexican Federal Code of Civil Proceedings.

Chapter VI, referred to as "enforcement of judgements", which is part of the Only Title in the Fourth Book called "about International Process Co-operation", dealt, in the past, with the way of recognising and enforcing judgements, private arbitral awards and other foreign legal resolutions. Nevertheless, more recently, the Mexican Union Congress reformed this Code to exclude the private arbitral awards with a commercial character, since those awards are now regulated in the aforementioned Commercial Code.

3.4. International Agreements.

The final point, of equal importance, in the Mexican legal structure refers to the International Agreements of which Mexico is signatory. The Mexican Constitution establishes, in article 133, that "this Constitution, all the laws emanated from the Mexican Union Congress and all the international agreements in accordance with the Constitution and approved by the Mexican Senate, will be supreme law. The judges of each federal state will follow this Constitution, laws and international agreements, instead of any contradictory regulation found in their own State Constitution"[26].

The legal precept described above, establishes the legal supremacy of the constitution, the laws emanating from the Mexican Union Congress, and all international agreements to which the Mexican Federation has subscribed. Consequently, all those legal regulations relating to international commercial arbitration mentioned in this

[25] Sovereignty can be definied as the political and legal concept relating to ultimate authority in a state, and the freedom of a state from external control. CURZON, (1993), p.358.

[26] The United Sates of Mexico is made up of 31 Federal States and the Federal District, each of which has its own State Constitution. For further information, see MADRID (DE LA), (1982).

article, including those embodied in the Commercial Code and the following international agreements, are in themselves supreme law:

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. (New York, 1958).

2. Inter-American Convention on International Commercial Arbitration. (Panama, 1975)

3. Inter-American Convention on the Extraterritorial Enforcement of Arbitration and Judgements of Foreign Awards. (Uruguay, 1979).

4. ARBITRAL OPTIONS IN MEXICO.

Arbitrium est judicium[27]

According to Professor Segio Bermudes and Dr. Carlos Lins, the information obtained about arbitrations in Spanish American countries, shows, *mutatis mutandis*, a situation which is not very different from that prevailing in Brazil. This can be confirmed by a brief look at arbitration in Argentina, Chile, Colombia, Costa Rica, Mexico, Uruguay and Venezuela[28].

The available options in Mexico to submit an arbitration are very narrow. First and foremost there is the Mexican Chapter of the International Chamber of Commerce (CCI)[29], the Arbitration Centre of Mexico (*CAM*)[30] and the Permanent Commission of Arbitration of the National Chamber of Commerce of Mexico City (*CANACO*), the National Chamber of Commerce of Mexico City acting as the Mexican Section of the Inter-American Commission of Commercial Arbitration[31], the Mexican Centre of Commercial

[27] "An award is judgement". *Opcit*. FN.2, p.117.
[28] See LALIVE (1995), p.132.
[29] *Cámara Internacional de Comercio* (*CIC*).
[30] *Centro de Arbitraje de México (CAM)*
[31] *Cámara Nacional de Comercio* (*CANACO*), acting as the Mexican Chapter of *La Comisión Interamericana de Arbitraje Comercial* (*CIAC*). The *CANACO* constituted a Permanent Commission of Arbitration which is the place where national and international arbitrations are administrated under its own rules. This Commission is located in *Paseo de la Reforma* No. 42, in Mexico City.

Arbitration[32], and the Commission to Protect the External Commerce, which is a dependency of the National Bank of External Commerce[33].

In the opinion of Mr. Julio C. Treviño, who is a Mexican eminence on the matter, the third and the fourth options mentioned above have not worked as they were expected to.

The ICC is an excellent option. This institution has been in charge of looking after the development of the world-wide international commerce and, in 1923, created the International Court of Arbitration[34], where most of the international disputes have been fairly resolved by using the Court's Rules[35].

The CAM and CANACO are very good options for national arbitrations, but not matured enough for international ones.

The CIAC, is a good option but, from our point of view, only for cases where both parties are in Latin-America, and all the elements of the contract are only related to this part of the world. This means, that this institution has not shown enough experience in overseas disputes and that its speciality has been focused on regional disputes.

CONCLUSIONS

Aequitas Sequitur Legem[36]

1. **Mexican legislation** has lately experienced some changes in order to adopt the Arbitration Model Law drafted by the UNCITRAL. Nevertheless, it has to be

[32] *Centro Mexicano de Arbitraje Comercial* (*CEMAC*), which is an institution with the purpose of answering consults about arbitration, as well as administrating private national and international arbitrations. Unfortunately, this Centre does not count with its own rules. This Centre is located in the same office as the *CANACO*.

[33] *Comisión para la Protección del Comercio Exterior* (*COMPROMEX*), depending on the *Banco Nacional de Comercio Exterior* (*BANCOMEXT*). According to its own rules, this Commission is able to hold arbitrations only where one of the parties (either the exporter or the importer) is domiciled in Mexico. This limitation shows an inclination that this institution has in protecting the Mexican interest in arbitration, which is obviously bad seen in an international atmosphere. This Commission is located in *Camino Santa Teresa* No. 1679, 2nd floor, in Mexico, City.

[34] This Court is located in 38, *Cours Albert*, 1er., 75008, Paris, France.

[35] See ICC (1988).

[36] "Equity follows the law". *Opcit*. FN.1, p.4.

recognised that this legislation has to be up-dated to keep up with constant changes in the field. This means, that the Mexican Union Congress shall follow every change and adaptation that domestic laws of other countries, and international legislation have, due to the fact that the best presentation card that a country could have in the international commercial ambit, is a modern legislation and qualified professionals.

2. Although we have to analyse the specific case in order to know the right decision where choosing **Arbitration vs. Litigation**, we share the idea that arbitration is much more practical, economical and just than litigation, at least when Mexico the forum of such a litigation.

3. Unfortunately, we have few **options in Mexico** to submit an international dispute to institutional arbitration, amongst which the ICC is the best option, due to fact that the rest do not show sufficient experience in those American-Europe cases. Therefore, it is necessary to promote other possible options.

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